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Investors

7
8 IN THE UNITED STATES BANKRUPTCY COURT
9 FOR THE DISTRICT OF ARIZONA

10 In re

11 MORTGAGES LTD.,

12 Debtor.

Chapter 11

Case No. 2:08-bk-07465-RJH

**OBJECTION AND RESERVATION OF
RIGHTS OF OFFICIAL COMMITTEE
OF INVESTORS TO PROVISIONS OF
CENTERPOINT INTERIM DIP LOAN**

Hearing: August 25, 2008
Time: 1:40 p.m.

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16 The Official Committee of Investors (“Investors Committee”) hereby expresses its
17 objection and reservation of rights to the Interim Stratera DIP Loan on Centerpoint.
18 Further, even if another lender such as Mountain Funding DIP Loan is substituted, the
19 objections stated herein are still applicable. The Investors Committee was sent a final
20 version of the Stratera term sheet Sunday night for the Monday hearing and a version of
21 the Mountain Funding term sheet at noon for this afternoon’s hearing. The Investors
22 Committee has not seen the draft loan documents from Stratera or Mountain Funding
23 spelling out the terms of the interim loan, particularly the Intercreditor Agreement. As
24 such, the Investors Committee cannot fully review and weigh how it is structured and
25 what adequate protection is being provided to the Investors for their ownership interest in
26 the Notes and Deed of Trust on the Centerpoint project.

1 The Investors Committee, without waiving its right to assert additional objections
2 to the final hearing, objects as follows:

3 1. The Debtor has not complied with Rule 4001(c). Further, while the Debtor
4 may have served the Investors Committee, the Debtor has not served the investors in the
5 Centerpoint loan prior to taking this action. Due process may require such service.

6 2. The Debtor does not have any provision for adequately protecting the rights
7 of the Investors.

8 3. As the Court is aware, the investors assert that they own an undivided
9 fractional interest in the Notes and Deed of Trust. Thus their interests are not property of
10 the estate and they are non-debtors.

11 4. The term sheets of both Stratera and Mountain Funding are vague and not
12 clear on the issues concerning the preferred or priority position and giving up control of
13 remedies to the new third party participating lender. For example, paragraph 7 of the
14 Stratera Interim DIP Loan term sheet has a very strange provision that upon a default on
15 the DIP loan and the Centerpoint Loan Stratera shall have a “superpriority right to the
16 management of the Centerpoint Loan including enforcement of remedies, collection,
17 foreclosure and liquidation of said loan—all as more fully described in the ICA, until the
18 DIP Loan is fully satisfied.” It is not clear what that phrase means or entails, but it
19 appears to be a delegation of the collection and servicing rights which have been
20 contracted to the Debtor by the investors. Mountain Funding in paragraph 6 has a
21 different regime of remedies and control. However, both clearly give control at some
22 point in time to a third party and restrict the rights and remedies of the Debtor and the
23 Investors.

24 5. The agency agreements are very specific about what the Debtor can do in
25 exercising its agency rights as with a borrower but there is nothing in the agreements that
26 would allow any delegation to another party of the collection rights or enforcement rights

1 or that even permits a subordination or priority of rights as between the investors and the
2 Debtor and a third party. If there is, then the Debtor needs to show the Court and the
3 parties such a provision. Debtor does not have any authority under law for this delegation
4 of its agency rights. It appears that Debtor intends in the DIP Loan to allow the new
5 money of \$4.8 million to control the rights and remedies until the DIP Loan is paid. This
6 is a clear conflict with the interests of the investors.

7 6. Finally, the Investors Committee reserves any and all of its rights and
8 arguments as to whether the Debtor has the legal ability to provide any "preferred"
9 payment to the new lender or subordination of the interest of the Investors in the
10 Centerpoint loan or whether the Court has the authority to approve such action. The
11 Investors Committee reserves any and all rights to argue in another situation or at the next
12 stage of this loan or in another loan transaction, that the Court has no authority and Debtor
13 is not authorized to subordinate or otherwise provide a preferred position to another party
14 which would be superior to and senior to the Investors' first deed of trust position on the
15 project. Nothing in this DIP financing should be viewed as a waiver by the Investors
16 Committee of such arguments in this project or in other loans or settlements in the
17 bankruptcy case.

18 DATED: August 25, 2008

19 FENNEMORE CRAIG, P.C.

20 By /s/Cathy L. Reece

21 Cathy L. Reece

Attorneys for Official Committee of Investors

22 COPY of the foregoing emailed or mailed
23 This 25th day of August, 2008 to the parties
on the attached Service List.

24 /s/ Susan Stanczak-Ingram

25
26 2101232.1

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9 *Litchfield Road Associates Limited Partnership, and*
10 *Baseline & Val Vista Associates Limited Partnership*

11 **IN THE UNITED STATES BANKRUPTCY COURT**
12 **FOR THE DISTRICT OF ARIZONA**

13 In re:
14 MORTGAGES LTD., an Arizona corporation,
15 Debtor.

In Proceedings Under Chapter 11
(converted from Chapter 7)

Case No. 2:08-bk-07465-PHX-RJH

**OBJECTION OF PARTIES-IN-INTEREST
EVA SPERBER-PORTER, LITCHFIELD
ROAD ASSOCIATES LIMITED
PARTNERSHIP, AND BASELINE & VAL
VISTA ASSOCIATES LIMITED
PARTNERSHIP TO EMERGENCY
MOTION FOR APPROVAL OF DEBTOR-
IN-POSSESSION FINANCING RE
CENTERPOINT**

19 Parties-In-Interest, Eva Sperber-Porter (hereinafter “Sperber-Porter”), Litchfield Road
20 Associates Limited Partnership and Baseline & Val Vista Associates Limited Partnership, hereby
21 object to Debtor’s “Emergency Motion For Approval of Debtor-In-Possession Financing Re
22 Centerpoint in Accordance with Bankruptcy Code Sections 364(c) and (d).”

23
24 From the minimal information provided in the emergency motion by the Debtor, it appears
25 that Stratera will have “Security in existing deed of trust with preferred payment.” It is not at all
26 clear from the motion whether or not Stratera is to be in first position on the deed of trust and
27

1 whether any or all of the existing fractional interest owners are to be subordinated to Stratera's
2 interests. If indeed Movants are to be subordinated to the interest of Stratera, under these
3 circumstances, Movants' security interest in the Centerpoint Development is at risk. With TLC
4 obviously in financial straits, and if Stratera is in first position, Stratera--a stranger to the Mortgages
5 Limited fractional interest scenario--would certainly have the power to foreclose on the deed of the
6 trust and wipe out the interests of these Movants and other fractional interest owners.
7

8 Moreover, the Debtor's proposal for the proposed DIP loan leaves too many unanswered
9 questions. For example, it is Movants' understanding that the Centerpoint loan to Tempe Land
10 Company is a non-performing loan. The Debtor has not adequately explained in its emergency
11 motion what, if any, actions have been taken to remedy that non-performing status and why any
12 proposed loan should be channeled through TLC at all. This appears to be a "bail out" loan for
13 TLC. The structure of the transaction does not protect Movants.
14

15 DATED this 25th day of August, 2008.

16
17 THOMAS SCHERN RICHARDSON, PLLC

18
19 By /s/ Richard R. Thomas

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22 Mesa, AZ 85204

23 *Attorneys for Eva Sperber-Porter, Litchfield Road
24 Associates Limited Partnership, and Baseline & Val
25 Vista Associates Limited Partnership*

26
27 ORIGINAL of the foregoing e-filed
28 this 25th day of August, 2008:

1 US Bankruptcy Court Clerk
2 & sent via the Court's CM/ECF system this
3 25th day of August, 2008 to all interested parties
4 in this action

5 COPY of the foregoing mailed
6 this 25th day of August, 2008:

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11 Carolyn J. Johnsen, Esq.
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16 /s/ Teresa Whitney

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11 **IN THE UNITED STATES BANKRUPTCY COURT**
12 **FOR THE DISTRICT OF ARIZONA**

13 In re:

In Proceedings Under Chapter 11
(converted from Chapter 7)

14 MORTGAGES LTD., an Arizona corporation,

Case No. 2:08-bk-07465-PHX-RJH

15 Debtor.

**SUPPLEMENTAL OBJECTION OF
PARTIES-IN-INTEREST EVA
SPERBER-PORTER, LITCHFIELD
ROAD ASSOCIATES LIMITED
PARTNERSHIP, AND BASELINE & VAL
VISTA ASSOCIATES LIMITED
PARTNERSHIP TO EMERGENCY
MOTION FOR APPROVAL OF
DEBTOR-IN-POSSESSION FINANCING
RE CENTERPOINT (MOUNTAIN
FUNDING)**

16 Parties-In-Interest, Eva Sperber-Porter (hereinafter “Sperber-Porter”), Litchfield
17 Road Associates Limited Partnership and Baseline & Val Vista Associates Limited
18 Partnership, hereby submit this supplemental objection to Debtor’s “Emergency Motion For
19 Approval of Debtor-In-Possession Financing Re Centerpoint in Accordance with
20

1 Bankruptcy Code Sections 364(c) and (d).” This supplemental objection arises from
2 Debtor’s recent disclosure and filing of its term sheet from Mountain Funding.

3
4 Movants do not purport to represent the interests of all so called “investors” in
5 Mortgages Limited. These Movants, like many others, are fractional interest owners with
6 ownership interest in the promissory notes and deed of trust relating to the Centerpoint loan
7 and project. Movants object to the efforts of Debtor and Tempe Land Company to modify
8 Movants’ interests in this Centerpoint project without properly notifying all fractional
9 interest owners and other investors in this project. The Mountain Funding proposal also
10 attempts to pledge the interests of these Movants as security for the loan. There is no
11 showing as to why the interests of Mortgages Limited alone should not satisfy that security
12 requirement, although undoubtedly Radical Bunny, LLC will have something to say about
13 that. Moreover, there is no mechanism within this proposal for a proportional pledge of the
14 interests of any separate investor.

15
16
17 Paragraph 7 of the Mountain Funding term sheet provides that one of the conditions
18 to closing of the loan is acceptance by the Official Investors Committee and its execution of
19 an acceptable “Intercreditor Agreement.” No such agreement has been provided.
20 Moreover, the Official Investors Committee does not purport to represent each individual
21 “investor” and has no authority to so act. Indeed, the disparity of interests among all
22 “investors” makes it impossible for the Official Investors Committee to fully and adequately
23 represent their interests. Moreover, each of these investors is an individual owner of its
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1 respective interest. Motion practice and briefing in this case so far seem to reflect a general
2 consensus that these investors do indeed have a separate ownership interest in these loans
3 and deeds of trust that is not property of the estate. The structure of the Mountain Funding
4 proposal ignores that individual ownership interest. There is simply no mechanism in place
5 by which the Official Investors Committee can purport to speak for or otherwise act each
6 individual investor, including Movants. Any proposal such as the Mountain Funding
7 proposal (or, for that matter, the Stratera proposal) must be noticed out to and specifically
8 approved by the individual “investors.”
9
10

11 DATED this 27th day of August, 2008.

12
13 THOMAS SCHERN RICHARDSON, PLLC

14 By /s/ Richard R. Thomas

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18 *Attorneys for Eva Sperber-Porter, Litchfield Road
19 Associates Limited Partnership, and Baseline & Val
20 Vista Associates Limited Partnership*

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10 /s/ Ronnie Sue Taxin

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7 **IN THE UNITED STATES BANKRUPTCY COURT**
8 **FOR THE DISTRICT OF ARIZONA**

9 In re:

10 MORTGAGES LTD., an Arizona
11 corporation,

12
13 Debtor.
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In Proceedings Under Chapter 11

Case No. 2:08-bk-07465

**OPPOSITION OF RADICAL BUNNY,
L.L.C., TO DEBTOR'S EMERGENCY
MOTION FOR APPROVAL OF
DEBTOR-IN-POSSESSION
FINANCING RE CENTERPOINT IN
ACCORDANCE WITH BANKRUPTCY
CODE SECTIONS 364(c) and (d)**

Hearing Date: August 25, 2008

Hearing Time: 1:40 p.m.

Location: 230 N. First Ave., 7th fl., Ctrm 603;
Phoenix, Arizona

Related Docket Nos. 408

21
22 Radical Bunny, L.L.C. ("RBLLC"), secured creditor and party in interest, by and
23 through undersigned counsel, hereby opposes the "Emergency Motion For Approval
24 Of Debtor-In-Possession Financing Re Centerpoint In Accordance With Bankruptcy
25 Code Sections 364(c) and (d)" (the "CPDIP Motion"), filed by debtor Mortgages Ltd.
26 (the "Debtor"). In support of its Opposition, RBLLC states as follows:

27 ///

28 ///

1
2 **FACTUAL BACKGROUND**

3 **The Case and Parties.**

4 This case was commenced by an involuntary petition filed on June 20, 2008.
5 An order for relief was entered in this case on June 24, 2008 ("Filing Date"). In the
6 gap period between June 20 and June 24, 2008, the Debtor obtained a \$500,000
7 loan ("GAP Loan") from a Southwest Value Partners related entity ("Gap Lender"); the
8 terms of the GAP Loan have never been disclosed by the Debtor.

9 As of the Filing Date, RBLLC (on behalf of its more than 900 loan participants)
10 is owed the outstanding principal amount, in the aggregate, of approximately \$200
11 million dollars. RBLLC's funds were used to finance the Debtor's business of making
12 loans made to developers to finance real estate development, including the loans
13 (herein, "Centerpoint Loans") made by the Debtor to Tempe Land Company
14 ("Borrower").

15 The Debtor has now agreed that RBLLC is a secured creditor of the Debtor
16 and that the Debtor's obligations to RBLLC are secured by most of the assets of
17 Debtor, including the Centerpoint Loans. (A copy of the executed settlement
18 agreement is attached hereto as **Exhibit A.**) See DE 155 & 203; RBLLC's Proof of
19 Claim No. 33; Testimony of Debtor's long-time Chief Financial Officer, Christopher J.
20 Olson, audio transcript of 8/6/08 hearing, 4:37:37-4:38; DE 2, Ex. A.

21 The Debtor represented to RBLLC that, as of April 14, 2008, Debtor held
22 \$69,683,216 of the Centerpoint Loans. Debtor's Schedules (DE 198) now reflect that
23 Debtor holds \$94,736,896 of the Centerpoint Loans made to Borrower. Based on the
24 Debtor's representations and Schedules, Debtor's interest in the Centerpoint Loans
25 increased by more than \$25 Million Dollars from April 28, 2008, through the Filing
26 Date. The Centerpoint Loans represent almost sixty percent (60%) of the Debtor's
27 \$167 million of mortgages held for investment and sale. See DE 376, Exhibits 1 and
28 2.

1 The Debtor's interest in the Centerpoint Loans represents a very significant
2 portion of RBLLC's secured collateral. As the only creditor with a secured interest in
3 the Centerpoint Loans, RBLLC has the greatest stake in the Debtor's requested
4 emergency funding. RBLLC has the most to lose: (1) if the emergency funding
5 effectively precludes any other financing or loan sale alternatives; (2) if any of the
6 emergency funding does not benefit RBLLC's collateral; (3) if the terms of the
7 proposed inter-creditor agreement with the investors, who hold only a minority
8 interest in the Centerpoint Loans, comes at the cost of RBLLC's interests; or (4) if the
9 emergency funding is allowed to effectively prime RBLLC's position without adequate
10 protection of RBLLC's first priority security interest. RBLLC opposes Debtor's
11 proposed financing.

12 **The Proposed Financing**¹.

13
14 The Debtor proposes to borrow \$4,600,000 (the "CPDIP Loan") from Stratera
15 Portfolio Advisors, LLC ("CPDIP Lender"). The Debtor has not disclosed any form of
16 agreement from the CPDIP Lender for funding of the CPDIP Loan. The Debtor has
17 not disclosed any loan documents. The Debtor has not disclosed any proposed inter-
18 creditor documents.

19 The Debtor requests funding of \$2,800,000 on an emergency basis. The
20 Debtor requests emergency funding of the five percent (5.0%) commitment fee on the
21 entire CPDIP Loan, i.e., \$230,000. The CPDIP Loan will accrue interest at fifteen
22 percent (15%). The Debtor requests emergency funding of the interest reserve for all
23 of the interest that would be paid on the entire CPDIP Loan, i.e., \$345,000. Debtor's
24 "budget" (attached as Exhibit A to the CPDIP Motion) indicates that \$587,500 will be
25 paid to the CPDIP Lender. This amount is apparently based on a \$4.7 million dollar

26
27 ¹ This Opposition was prepared in response to the CPDIP Motion. On Sunday, August 24, 2008 at
28 approximately 5:30 p.m., counsel received via e-mail an unsigned lending proposal ("Term Sheet")
containing different terms from those in the CPDIP Motion. RBLLC objects to the Term Sheet for all the
reasons set forth herein and has identified several of the issues on **Addendum A** attached hereto and
incorporated by reference. (A copy of the Term Sheet is attached hereto as **Exhibit 1** to Addendum A.)

1 loan so it is unclear whether the Debtor is requesting emergency funding of \$575,000
2 or \$587,500. The only thing that is clear is that the Debtor seeks to pay the CPDIP
3 Lender, up-front, for the entire CPDIP Loan.

4 The Debtor seeks \$2,760,467.60 of emergency advances of the CPDIP Loan
5 for highlighted items set forth in a summary "budget" attached as Exhibit A to the
6 CPDIP Motion. The Debtor has also not disclosed the terms pursuant to which it
7 would provide funding to the Borrower from the CPDIP Loan advances. The
8 information regarding the use of the requested emergency funds is vague. No back-
9 up information was provided to support the advance of funds from the Debtor to the
10 Borrower. The Debtor appears to seek approval for CPDIP Loan advances (to
11 advance to Borrower) to pay more than \$1 million dollars to Borrower's
12 subcontractors/vendors for previous work, approximately \$1 million for new
13 construction services, and the remainder for a crane rental, payment of utilities and
14 insurance payments.

15 The Debtor's information on the alleged need for emergency funding is also
16 vague. The Debtor mentions the "Modification" to the Deed of Trust agreed to by the
17 Borrower (recorded in the real property records March 22, 2008, at Document No.
18 20080292160). Section 3 of that Modification anticipated, by its terms, significant
19 agreed-to delay in the watertight completion of Tower II. The Debtor now asserts an
20 unspecified urgency. The Debtor indicates that it "understands" that there are almost
21 \$22 million in pending sales by the Borrower, but provides no disclosure on: (1)
22 whether those contracts are enforceable or are contingent on a condominium
23 purchaser's obtaining financing that may not be available in today's mortgage market;
24 (2) whether the price per square foot or sale prices of those contracts meet the
25 minimum release prices under the Modification; or (3) whether a delay of two weeks
26 in obtaining funding under the CPDIP Loan would have any effect those contracts. .
27

28

1 The Debtor intends to grant as security for the CPDIP Loan the existing deed
2 of trust" on the Borrower's property, "with preferred payment." The Debtor indicates
3 that an inter-creditor agreement will be entered into with investors in that deed of trust
4 to allow CPDIP to receive "priority payments". The Debtor has not disclosed that
5 proposed inter-creditor agreement, or identified how RBLLC's secured interest in the
6 CPDIP Loan, including the deed of trust, would be adequately protected in
7 connection with RBLLC's collateral or such payment priority. The Debtor further
8 seeks authority to grant the CPDIP Lender a super-priority administrative claim,
9 subject to an unspecified carve-out for professionals.

10 There has also been no disclosure for the payment of other amounts to be
11 advanced under the CPDIP Loan. The non-emergency portion of the CPDIP
12 includes \$400,000 for a "\$75m CPDIP Financing Break Fee" (Ex. A). There is no
13 explanation of the Debtor's obligation to pay this fee or to whom it would be paid.
14 The Debtor does not explain how that \$400,000 fee relates to the \$250,000
15 Centerpoint Financing Fee included on the Debtor's separate financing budget
16 (supporting the Debtor's separate DIP funding for Debtor operations). If this break
17 fee is to be paid to Gap Lender, the creditors of this estate deserve disclosure and
18 due process on the issue of whether the Debtor was authorized to incur an obligation
19 to pay an excessive break fee during the "gap period".

20 This need for complete disclosure is particularly important given the history of
21 this case. The Debtor previously sought emergency financing in this case in
22 connection with the Centerpoint Loans from Gap Lender. The Debtor withdrew that
23 request after vigorous objection by virtually all interested parties, including objections
24 based on a material lack of disclosure. Many of the concerns raised then, including
25 questions of conflicts of interest and who is effectively controlling the Debtor (and thus
26 the underlying control of the Debtor's "business judgment"), have never been
27 addressed. New questions regarding conflicts apply to the CPDIP Lender as well.
28

1 John Clemency of Greenberg Traurig LLP ("GT") represented to this Court on August
2 8, 2008 [DE 325, ¶14(d)] that GT formed the CPDIP Lender but has provided no
3 other representation of CPDIP Lender. Mr. Clemency himself recently appeared in
4 this case on behalf of CPDIP Lender, and Arizona corporation commission on-line
5 records reflect that another GT attorney continues to act as the statutory agent for
6 CPDIP Lender.

7
8 The few disclosed proposed terms of the CPDIP Loan provide that the term of
9 the CPDIP Loan will end on a "change in control or sale, conveyance or refinancing of
10 Centerpoint". It is unclear if this language is intended to address a "change in control"
11 of the Debtor or the Borrower. However, to the extent that it refers to the Debtor, who
12 actually controls the Debtor today remains unclear. As set forth in detail in the record
13 of this case, see, e.g., DE 152, almost immediately after Scott Coles' death, GT
14 formed a limited liability company, NMLC, LLC, with Laura Martini as the sole
15 member. That entity was granted voting control of the Debtor. Arizona corporation
16 commission on-line records reflect that a GT attorney continues to act as the statutory
17 agent for NMLC, LLC, with Laura Martini as the sole member. Earlier in this case, GT
18 withdrew as bankruptcy counsel for the Debtor, and the Debtor publicly removed
19 Laura Martini as President. Based on that removal, the Gap Lender declared a
20 default in the Gap Loan based on a change of control of the Debtor. See DE 200, Ex.
21 A.

22 However, according to John Clemency's sworn evidence, Laura Martini and
23 the GT created entity NMLC, LLC continue to control the Debtor. See DE 325, ¶ 8.
24 RBLLC and the other creditors of this estate deserve full disclosure of whether the
25 CPDIP Loan will be in default if the GT created entity NMLC, LLC and its member,
26 Laura Martini, do not continue to effectively control the Debtor. RBLLC and the other
27 creditors of this estate also deserve full disclosure regarding GT's representation of
28 CPDIP Lender and GT's continued involvement with the entity controlling the Debtor.

1
2 **OPPOSITION**

3 A. **The Debtor Has Not Satisfied Rule 4001(c)**

4 RBLLC first opposes the CPDIP Motion because it does not satisfy the
5 requirements of Rule 4001(c), F.R.B.P. An initial preliminary determination must be
6 made by this Court on whether to even consider the CPDIP Motion on these grounds.
7 Rule 4001(c)(1)(A) provides that a motion for authority to obtain credit shall be
8 accompanied by a copy of the credit agreement.

9 Further, since Debtor provided no credit agreement, Debtor has not complied
10 with the additional notice protections imposed through 2007 changes to Rule 4001.
11 Under Rule 4001(c)(1)(B), the CPDIP Motion was required to list or summarize, and
12 set out the location within the relevant documents of, all material provisions of the
13 proposed credit agreement, including interest rate, maturity, events of default, liens,
14 borrowing limits, and borrowing conditions. The Debtor cannot comply with these
15 requirements by providing a summary that the Debtor's creditors cannot compare to
16 the actual terms of the credit agreement. Key terms of the CPDIP Loan remain
17 unknown. Based on Debtor's failure to make timely required disclosures, Debtor is
18 not entitled to approval of any of the requested financing within 15 days of filing its
19 CPDIP Motion as provided in Rule 4001(c)(2); such 15 day period cannot commence
20 to run until Debtor has made the full disclosures required by Rule 4001(c).

21 This 15 day period is particularly important when there has been vital
22 information on the collateral for the CPDIP Loan that remains undisclosed, including:
23 (1) if the emergency funding will effectively preclude any other financing or sale
24 alternatives vis-à-vis the Centerpoint Loans; (2) whether key CPDIP Loan
25 requirements may otherwise adversely affect the creditors of this bankruptcy estate
26 (has the Debtor promised CPDIP Lender an additional "break fee" if CPDIP Lender is
27 not given the right to make additional loans secured by the Centerpoint project?); (3)
28 the actual terms of the proposed inter-creditor agreement with investors; or (4) if there

1 will be appropriate protections of RBLLC's first-priority security interest in the
2 Centerpoint Loans. The Debtor has not even provided back-up information on the
3 budgeted items that would be advanced through proceeds of the CPDIP Loan.

4 Additionally, Debtor has not submitted sufficient evidence that Debtor will suffer
5 "immediate and irreparable harm" with regard to the CPDIP Loan, or even that the
6 Borrower's property will do so without "emergency" funding. Five months ago the
7 Debtor and Borrower agreed to a significant delay in the watertight completion of
8 Tower II. It is difficult to understand how a two week delay could harm Tower II.
9 There is also only speculation regarding the effect of a two week delay on sales in the
10 project. There is no indication of how a two week delay could impact alleged existing
11 sale contracts. These circumstances do not justify granting approval of emergency
12 advances prior to providing appropriate due process protections to RBLLC as a
13 secured creditor.
14

15 B. The Debtor Has Provided No Evidence of Adequate Protection

16 RBLLC opposes the CPDIP Motion because there has been no showing of
17 adequate protection. The Debtor has not proven that the Debtor is not able to obtain
18 other credit, either on more favorable terms or without priming existing security
19 interests. The Debtor specifically sought financing secured by an assignment of a
20 beneficial interest in the existing Centerpoint Deed of Trust on a "preferred basis to
21 the current beneficiaries". See DE 318, Ex. C.

22 The Debtor claims this is not a priming lien but more in the nature of a priority
23 of payment (p. 6, lines 17-18). However, the priority of payment effectively primes
24 RBLLC's first priority security interest in the same collateral. The Debtor holds almost
25 \$95,000,000 of the Centerpoint Loans. This is RBLLC's collateral and it is entitled to
26 appropriate adequate protection pursuant to 11 U.S.C. §364(d)(1) before its secured
27 interest is primed. The effect of this priming priority payment will also be impacted by
28 the terms of the proposed inter-creditor agreement with investors who hold a minority

1 interest in the Centerpoint Loans. The Debtor has not disclosed that inter-creditor
2 agreement. The Debtor has not disclosed who those investors are, or whether any of
3 those investors are insiders.

4 The Debtor has not provided any evidence to establish benefit to the estate
5 through its requested emergency funding. There is no evidence of what interest rate
6 that the Borrower will pay for advances from the Debtor funded by the CPDIP Loan.
7 RBLLC cannot determine the net impact on the estate or RBLLC's collateral. There
8 is no evidence that the Debtor's interest in the Centerpoint Loans could not be more
9 efficiently protected. For example, does it make sense to pay more than a million
10 dollars for work that has already been performed? What is the Borrower's obligation
11 to advance its own funds under the terms of the Centerpoint Loans?
12

13 At this point, the value to the Debtor's bankruptcy estate of the proposed
14 emergency funding is speculative, at best. The Debtor is claiming that this Court
15 must bow to the Debtor's "business judgment" but it is unclear who is actually
16 providing that judgment and for what purposes the Debtor may be pursuing an
17 alliance with CPDIP Lender in connection with the Centerpoint Loans. RBLLC and
18 the investors in the Centerpoint Loans are the true parties in interest with regard to
19 the impact of any financing secured by the Centerpoint Loans. RBLLC and the
20 investors in the Centerpoint Loans are the interested persons who will pay the
21 economic cost of any priority given for financing secured by the Centerpoint Loans.
22 RBLLC and the investors are entitled to full disclosure and protections of their
23 interest.

24 The Debtor is seeking to provide collateral to the CPDIP Lender that has
25 potential ramifications that have not been explained to RBLLC or the other creditors
26 of its estate. Without detailed CPDIP Loan information, RBLLC cannot determine the
27 burden that the Debtor is attempting to impose on RBLLC and the estate. It could be
28 advisable for the Debtor to incur obligations to protect the value of its collateral, but

1 RBLLC deserves disclosure that is sufficient to properly evaluate the benefit in
2 incurring priority debt. It is also vitally important that appropriate disclosures be made
3 to RBLLC on how the CPDIP Loan could affect future alternatives for dealing with
4 RBLLC's secured collateral. RBLLC is uncertain whether RBLLC's interests will be
5 adequately protected with regard to the actual physical possession of the promissory
6 notes signed by the Borrower. The Debtor has not disclosed whether any proposed
7 assignment to the CPDIP Lender will appropriately preserve and adequately protect
8 RBLLC's interests. See A.R.S. § 47-9330(d) (allowing the creation of priority interests
9 in promissory notes through possession).

10 **CONCLUSION**

11 WHEREFORE, RBLLC respectfully requests that the Court deny all
12 emergency funding requested in the CPDIP Motion, or defer ruling on the emergency
13 portion of the CPDIP Motion until RBLLC and the other creditors of this estate have
14 been provided with adequate disclosure and due process. RBLLC further requests
15 that this Court deny the CPDIP Loan unless and until RBLLC has been provided with
16 adequate protection with regard to the most significant asset securing RBLLC's loans
17 to the Debtor. RBLLC further seeks such additional and other relief as is just and
18 proper under the circumstances of this case.

19 DATED this 25th day of August, 2008.

20 DECONCINI McDONALD YETWIN & LACY, P.C.

21
22
23 BY /s/SLF #009687 

24 Shelton L. Freeman
25 Attorneys for Radical Bunny, L.L.C.

26 ///

27 ///

28 ///

EXHIBIT A

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is dated as of August 15, 2008, and is made by and between Mortgages Ltd., an Arizona corporation, as debtor-in-possession ("Debtor") and Radical Bunny , L.L.C., an Arizona limited liability company ("RBLLC").

RECITALS:

A. By virtue of an Order for Relief entered June 24, 2008 ("Commencement Date"), Debtor is a debtor-in-possession in Chapter 11 Bankruptcy Case No. 2:08-bk-07465 (the "Bankruptcy Case"), which is pending before the United States Bankruptcy Court for the District of Arizona (the "Court").

B. Prior to the Commencement Date, Debtor sold to a large number of individuals and entities ("Investors") various fractional interests ("Investor Interests") in promissory notes and deeds of trust. Prior to the Commencement Date, it was the Debtor's ordinary course of business to collect monies from the borrowers on such promissory notes and pay such monies to the Investors ("Investor Payments") after deducting servicing and other fees ("Fees"), all in accordance with the agreements between the Investors and the Debtor. In addition, the Debtor owns various fractional or whole interests in promissory notes and deeds of trust ("Debtor Interests") and the proceeds from such notes have been paid similarly to the Debtor ("Debtor Payments") without deducting Fees. A list of the Debtor Interests is attached hereto as Exhibit A.

C. Debtor owns a complete or partial interest in certain other real estate assets including properties known as Central & Highland; Chateaux on Central; a 40-acre Troon parcel; Mummy Mountain 8; a 21-acre Fountain Hills parcel and a note payable from Scott Coles ("Other Assets"). Debtor anticipates that the Other Assets may generate funds for the Debtor.

D. RBLLC has filed a proof of claim for a secured claim in the ML Bankruptcy for all amounts owing to RBLLC based on loans advanced in the principal amount of \$197,232,758.05 ("RBLLC Claim"). The loans are evidenced by a series of promissory notes ("Notes")¹. In addition, RBLLC has filed in the Bankruptcy Case a Notice of Non-Consent of Use of Cash Collateral. RBLLC claims it has a security interest in all of Debtor's assets. Debtor has filed a response to the Notice of Non-Consent disputing RBLLC's claimed security interest.

E. On August 1, 2008, the Debtor filed in the Bankruptcy Case an "Expedited Motion for Approval of Debtor-In-Possession Financing in Accordance With Bankruptcy Code Sections 364(c) and (d) ("DIP Motion") seeking \$5,000,000 in working capital funds. RBLLC filed an objection to the DIP Motion. The Creditor

¹ This excludes any loans by RBLLC secured by a direct fractional beneficial interest in a project.

Committee filed a conditional objection to the DIP Motion. The Court approved an initial advance of \$500,000, subject to segregation of \$50,000 as adequate protection of RBLLC's alleged secured claim.

F. On August 13, 2008, the Court granted a Stipulated Order Concerning Payment of Certain Fees to Debtor Pursuant to Servicing and Agency Agreements allowing the Debtor to use the Fees in accordance with a budget approved in conjunction with the DIP Motion.

G. The Parties have entered into this Agreement to compromise and resolve the issues concerning the RBLLC claimed security interest in order to avoid the cost and uncertainty of litigation in connection therewith.

AGREEMENT:

Based on the foregoing Recitals which are acknowledged by the Parties to be true and accurate, the Parties further agree as follows:

1. The RBLLC Secured Claim. The Parties agree that with the exception of the "Excepted Liens" defined below, RBLLC holds a first position valid, perfected and enforceable lien on the following assets of the Debtor: all of Debtor's right, title and interest in: (a) the Debtor Interests and Debtor Payments and Fees; and (b) Chateaux on Central, Mummy Mountain 8; the 21-acre Fountain Hills parcel and the note payable from Scott Coles ("RBLLC Assets"). Debtor agrees that RBLLC's perfected, secured claim on the RBLLC Assets is and shall remain a perfected, secured claim without RBLLC being required to take any further action to perfect or secure such secured claim or to trace proceeds from RBLLC's collateral. Notwithstanding the foregoing, (a) RBLLC does not claim and shall not have a security interest in the Investor Interests or any proceeds paid on account of the Investor Interests; and (b) RBLLC liens are subject and subordinate to all existing, valid liens existing on the Commencement Date including but not limited to: (1) Arizona Bank & Trust; (2) Artemis Realty Capital, LLC; (3) Southwest Value Partners; (4) Gold Creek; and (5) Stratera Portfolio Advisors, LLC (collectively, the "Excepted Liens").

2. Payments and Other Obligations to RBLLC. The Parties agree that commencing upon Court approval of this Agreement, the Debtor shall pay to RBLLC all Debtor Payments that have been received since the Commencement Date consisting of interest only and thereafter on a monthly basis. Further, upon approval of the DIP Motion, RBLLC shall be entitled to the immediate distribution of the \$50,000 being held for its benefit under the interim order. As long as the Debtor remains as the Debtor-in-Possession and/or under a plan of reorganization confirmed by the Debtor, RBLLC agrees that the Debtor may retain the initial ten Million Dollars (\$10,000,000) from any funds obtained from a *principal reduction*, sale or other disposition from the RBLLC Assets, which funds will first be

exclusively applied to pay the loan approved in the DIP Motion. RBLLC shall retain its security interest in those funds until expended by the Debtor, but consents to the use of such funds by the Debtor. RBLLC also consents to the use of the Fees. In the event that a trustee is appointed or the Chapter 11 case is either converted or dismissed, the ability to retain any portion of the Debtor Payments shall terminate and RBLLC shall be entitled to receive any remaining funds received by the Debtor from its collateral as well as any remaining Fees. Debtor shall provide to RBLLC monthly financial statements and agrees to meet with RBLLC on a quarterly basis to review operations of the Debtor. Debtor agrees that RBLLC shall be entitled to participate in negotiations and must approve the terms of any resolution with a borrower for which the Debtor Interests are greater than 50 percent so long as the remaining Investor Interests are in agreement and that RBLLC may participate in negotiations with borrowers for which the Debtor Interests are greater than \$6,000,000. Unless otherwise provided, upon entry of an order approving confirmation of a plan by the Debtor, RBLLC's security interest in Fees shall expire.

3. Tender of Debtor Interests. The Parties agree that pursuant to the RBLLC Notes, the Debtor may tender the Debtor Interests to RBLLC in full satisfaction of the principal amount of the Debtor Interests in the Notes transferred to RBLLC. The Debtor agrees that pursuant to a plan of reorganization, it will tender to RBLLC all of the Debtor Interests and RBLLC agrees to accept all of the Debtor Interests in full satisfaction of the principal amount of the Debtor Interests in the Notes transferred to RBLLC, subject to RBLLC's ability to assert an unsecured claim calculated on the basis of RBLLC's total claim less any amounts recovered by RBLLC from the Debtor.

4. Unsecured Pool. The Parties agree that any claim for unpaid principal or interest held by RBLLC, the Investors and the Unsecured Creditors shall be classified in a single class pursuant to a plan of reorganization. That class will be provided with assets of the Debtor, including without limitation the litigation recoveries and avoidance claims of the estate and the members of that class shall share *pari passu* in any distribution, except that RBLLC shall be entitled to a priority recovery from the Unsecured Pool in an amount equal to the sums received by the Debtor from RBLLC under Section 3 above before the other parties share in the distributions.

5. DIP Financing. The Parties agree to support the DIP Motion for \$5,000,000 and to withdraw any objections filed.

6. Court Approval. The Debtor shall use its best efforts to file immediately with the Court a motion to approve this Agreement and to file a proposed order of approval. The Parties agree that the Agreement is subject to Court approval; however, RBLLC agrees that so long as a motion to approve this Agreement has been filed prior to the hearing on the DIP Motion and the \$50,000 is distributed to RBLLC as part of the Order approving the DIP Motion, it will

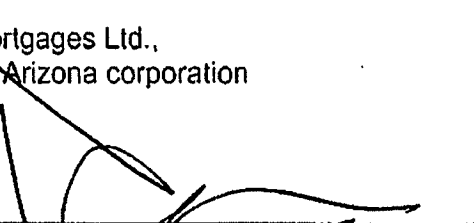
support the DIP Motion. Except for support of the DIP Motion and the distribution of the \$50,000, all other obligations of the Parties hereunder shall not become effective or enforceable until the first business day after the order by the Court approving this Agreement becomes final and non-appealable ("Effective Date").

7. Counterparts; Facsimile. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same conditional agreement. An executed copy and an executed facsimile of this Agreement shall be deemed as binding and effective as an executed original.

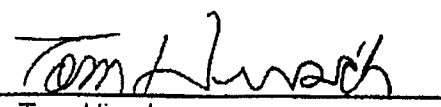
8. Settlement. This Agreement and the settlement contemplated hereby is made in an attempt to settle and compromise disputed claims. In the event that the Effective Date does not occur for any reason, no provision of this Agreement will be deemed to be an admission of any party, it being expressly understood that the entirety of this Agreement is subject to Federal Rule of Evidence 408.

The parties have executed this Agreement as of the date set forth above.

Mortgages Ltd.,
an Arizona corporation

By 
Printed Name RICHARD FEUDHEIM
Title CEO

Radical Bunny , L.L.C.,
an Arizona limited liability company

By 
Tom Hirsch
Its: Manager

ADDENDUM A

The unsigned Term Sheet disclosed less than 24 hours before this Court's August 25, 2008 hearing reveals:¹

- 1) The Debtor's CPDIP Motion stated that Stratera Portfolio Advisors, LLC would provide the requested funding. The Term Sheet now indicates that any unknown related entity may provide funding.
- 2) The Term Sheet provides for a maturity date on the loan 180 days from funding (among a number of other events that constitute maturity). Debtor fails to provide any means for repayment of the loan at maturity.
- 3) The Term Sheet references an Inter-creditor Agreement to be entered into between Debtor and Lender as a condition to funding (par. 7). Debtor has not disclosed a copy of such Inter-creditor Agreement. The suggested provisions of that agreement, as discussed below, raise significant concerns.
- 4) The Debtor's CPDIP Motion, p. 6, states that the security to be provided the Lender "is not a priming lien" but more in the nature of a priority of payment. The Term Sheet states that the Lender will be granted a super-priority secured first lien and claim and a super-priority right to payment of all proceeds (par. 7). The Debtor has already agreed with RBLLC that RBLLC has a first priority, valid, perfected, and enforceable lien on the collateral proposed to be given to the Lender. The Debtor must provide adequate protection to RBLLC before actually "priming" RBLLC's lien.
- 5) Additional rights proposed to be given to the Lender create significant risks to RBLLC's collateral. The Term Sheet provides that if there is an event of default under either the Centerpoint Loan or the CPDIP Loan, then the Lender will have a "super-priority right to management of the Centerpoint Loan including enforcement of remedies, collection, foreclosure and liquidation of said loan..."(par 7). The Debtor has no

¹ Defined terms used in this Addendum that are inconsistent with RBLLC's Objection, are as identified in the Term Sheet.

control over whether an event of default occurs under the Centerpoint Loan. The Term Sheet does not identify the extent of "events of default" under the DIP Loan, as required by Rule 4001(c), F.R.B.P. The Debtor is ceding its rights to manage a deed of trust in excess of \$133 million dollars to a lender that may advance as little as \$2.8 million.

- 6) The Term Sheet references a settlement agreement between Debtor and Tempe Land Company, the Centerpoint Borrower, and related loan guarantors (par. J). The Debtor has not disclosed an executed copy of a settlement agreement with Tempe Land Company. Under the Settlement Agreement between the Debtor and RBLLC that was announced on the record on August 21, 2008, Debtor must obtain RBLLC's approval of any resolution with a borrower in which the Debtor's Interests are greater than 50%. As set forth in the Objection, Debtor holds over 70% of the Centerpoint Loan interests, representing a significant portion of RBLLC's collateral. Despite the significance of the amounts and liens at issue, Debtor attempts to significantly alter and prime these rights on less than 24 hours notice.
- 7) Further, undisclosed in the Debtor's CPDIP Motion, the Debtor proposes to provide Lender with a 5% of a "ML Participation Interest". Without the settlement agreement, it is impossible to determine the economic impact of this provision. This provision is troubling in a number of respects, not the least of which is Debtor's agreement with RBLLC that it holds a security interest in all of the Debtor's interests in loans, yet Debtor appears to be giving away those interests to other parties without consulting with RBLLC.
- 8) The Term Sheet indicates that the Lender will have a Right-of-First Refusal for all future financing of the Centerpoint project. The terms of this right are unknown, but any such right is an unnecessary burden on the estate.
- 9) The Term Sheet reveals other material terms that vary from the Debtor's CPDIP Motion or were not disclosed. RBLLC reserves the right to supplement its Objection after proper notice by the Debtor and full disclosure of all applicable terms and agreements.

EXHIBIT 1

STRATERA PORTFOLIO ADVISORS

PO Box 15608

Phoenix, AZ 85060

602.300.2430 Fax 480.990.0968

August 23, 2008

Mr. Rich Feldheim
Mortgages Ltd.
4455 E. Camelback Rd.
Phoenix, AZ 85018

RE: DIP FINANCING ON CERTERPOINT FOR UP TO \$4.8 MILLION

Dear Mr. Feldheim:

Stratera Portfolio Advisors, LLC ("SPA" or "Lender") is pleased to submit the following proposal for a Debtor-In-Possession ("DIP") Loan to Mortgages Ltd. ("Debtor") which is currently operating as a debtor-in-possession under Chapter 11 of the bankruptcy code. Any binding agreement for this financing is subject to execution of definitive agreements by the parties.

1. LENDER.

Lender for this DIP Loan shall be SPA or a related entity.

2. DIP LOAN AMOUNT.

The proposed financing shall be a multiple-advance Loan for an amount of up to \$4.8 million and from which all of Lender's costs and expenses to underwrite and document the transaction, including legal expenses, shall be paid with the first draw.

3. USE.

The DIP Loan shall be used to fund emergency DIP financing to cover specified and budgeted capital needs of Debtor's Centerpoint Loan on property in Tempe, Arizona. Any other use will require specific written approval from Lender.

4. INTEREST RATE.

The interest rate shall be 15% APR on the total DIP Loan commitment amount. The interest for the 180 term shall be fully earned upon funding of each portion of the Loan (without duplication) and shall be reserved by Lender.

5. COMMITMENT FEE.

A Commitment Fee in the amount of 5% of the total DIP Loan commitment amount shall be due upon initial funding of the Loan and shall be paid upon initial funding.

6. DIP LOAN TERM.

The Loan balance will mature at the earlier of 180 days from funding, confirmation of Debtor's reorganization plan, dismissal, conversion of the Plan to Chapter 7, court

appointment of a Trustee, change in control of Borrower or Borrower's sale, conveyance or refinancing of the Centerpoint Loan collateral.

7. STRUCTURE AND COLLATERAL.

As to be more fully described in the definitive agreements, the DIP Loan will be secured as follows:

The DIP Loan funds will be advanced by Lender for funding Debtor's existing Centerpoint Loan which is secured by, along with other instruments, a valid first position Deed of Trust & Assignment of Rents in favor of Debtor. As a condition precedent to the funding of this DIP Loan, Lender and Debtor shall enter into an Inter-Creditor Agreement ("ICA"), which shall be consented to by Tempe Land Company, L.L.C. (the "Centerpoint Borrower") and the guarantors of the Centerpoint Loan. In addition to other provisions set forth therein, the ICA shall establish Lender as the senior lien holder/creditor under the Debtor's First Deed of Trust and all other loan documents related to the Centerpoint Loan. Lender shall be granted a super-priority secured first lien and claim on the Debtor's First Deed of Trust and all other loan documents related to the Centerpoint Loan, the Centerpoint Loan and related collateral (including, without limitation, any assignments of architectural, engineering, feasibility and market studies and all other professional work product associated with the collateral property) with super-priority rights to all proceeds therefrom until Lender has been paid in full. In the event Lender is not paid in full from proceeds of the Centerpoint Loan or its collateral, then Lender shall have an allowed super-priority administrative expense claim against the general assets of the Debtor for the remaining balance due. In the event of a default under the DIP Loan or the Centerpoint Loan, and subject to a reasonable cure period, Lender shall have a super-priority right to the management of the Centerpoint Loan including enforcement of remedies, collection, foreclosure and liquidation of said loan--all as more fully described in the ICA, until the DIP Loan is fully satisfied. The lien interests and super-priority administrative claim of Lender will be "so ordered" in interim and final orders (the "Orders") entered by the Bankruptcy Court presiding over the Debtor's Chapter 11 case, and the Orders will be acceptable to Lender in form and content.

8. Definitive Agreements.

Lender's obligation to close and fund the DIP Loan will be subject to the parties' execution of definitive agreements required by Lender in its sole discretion and to be confirmed by the Orders.

9. Funding.

It is acknowledged that the Centerpoint Borrower will seek an initial advance of up to \$2.8 million for emergency funding pursuant to a budget to be submitted and approved by Lender, Debtor and the Court.

10. Miscellaneous Conditions.

A. Centerpoint Borrower shall make available to Lender all books and records of its operations, assets and liabilities, and Debtor shall make available to Lender all of its books and records relating to the Centerpoint Loan, for Lender's review and diligence prior to consummating this transaction and during the term of this financing.

B. [Reserved.]

C. If Debtor terminates this transaction prior to an initial funding, then Lender's diligence, legal and transaction expenses shall become a super-priority administrative claim payable in full to Lender within 10 days of Lender's written notice to Debtor, subject to the limitations noted in clause D below.

D. From execution hereof and continuing through all stages of the transaction, its closing, administration and collection of this DIP Loan, Debtor shall pay all of Lender's professional fees and costs incurred, including legal fees and costs; provided, however, that Lender's legal fees and due diligence fees to originally document and close the transaction shall not exceed \$25,000.00.

E. In addition to other conditions precedent, Lender's obligation to close and fund this DIP Loan is contingent upon Lender receiving and approving in its sole discretion: all environmental reports and environmental matters affecting the collateral property, acceptable Lender's extended title insurance (including, without limitation, evidence that Debtor has obtained a date-down to its existing title insurance policies insuring that the advances by Debtor to the Centerpoint Borrower from the funds received by Debtor from Lender are subject to no liens other than those acceptable to Lender in its discretion), an ALTA survey of the property, acceptable property and liability insurance coverage naming Lender, and any other conditions reasonably required by Lender's counsel. Lender's obligation to close and fund this DIP Loan is contingent also upon Bankruptcy Court approval and Orders, in form and substance acceptable to Lender, including provisions that Lender is receiving the super-priority secured liens set forth herein; and that no modification of such Orders will affect the validity and enforceability of the financing provided by Lender before such modification.

F. Lender shall be satisfied in its sole discretion as to the condition of the Centerpoint collateral.

G. If, due to Lender's diligence, Lender decides not to proceed with definitive agreements for this transaction, then Lender shall have no obligation to do so. In such event, Lender may terminate its proposal at any time without liability or obligation whatsoever to Debtor.

H. Lender shall receive from the Centerpoint Borrower and the other Guarantors (as defined below) an (i) Indemnification Agreement to defend, hold harmless and release Lender from any and all prior actions, claims or damages of any nature between the parties and arising from the Centerpoint Loan, known or unknown, and (ii) an agreement that there are no current off-sets to the amounts due to Debtor under the Centerpoint Loan (as modified by the Settlement Agreement (as defined below)). The parties to the existing Centerpoint Loan shall also provide legal assurances acceptable to Lender that the existing Centerpoint Loan (as modified pursuant to the Settlement Agreement) is a valid and enforceable obligation of the Centerpoint Borrower and that the Debtor has all security and collateral rights and remedies set forth in the loan

documents. The agreements required in this paragraph shall be approved by Lender's counsel in its sole discretion.

I. As additional consideration for receiving the financing set forth herein, Centerpoint Borrower shall grant to Lender a non-exclusive written Right-of-First-Refusal Agreement to provide additional financing to complete the Centerpoint project. The Agreement shall require Lender to offer an equivalent or better financing commitment, on mutually agreeable terms, within 21 days of Lender receiving a true and bona fide proposal from another ready, willing and able party to provide said financing.

J. As additional consideration for receiving the financing set forth herein, which financing has been a procuring cause for the execution of the Settlement Agreement and Restatement of Deed of Trust by Debtor, the Centerpoint Borrower and the guarantors of the Centerpoint Loan (the "Settlement Agreement"), Debtor shall grant to Lender a participation in a portion of the settlement proceeds received by Debtor pursuant to the Settlement Agreement. The participation interest of Lender owing from Debtor shall be equal to five percent (5%) of the "ML Participation Interest" referred to in the Settlement Agreement. The participation interest owing to Lender from Debtor shall be evidenced by a written participation agreement acceptable to Lender.

K. The DIP Loan amount shall be guaranteed by the following (collectively, the "Guarantors"): (i) the Centerpoint Loan Borrower; and (ii) the principals of the Centerpoint Loan Borrower, including Kingston Capital Co., LLC, Graystar Investment, L.L.C., Kenneth Losch (and his spouse, if applicable, and any trust of Kenneth Losch and/or his spouse, to the extent applicable) and David Dewar (and his spouse, if applicable, and any trust of David Dewar and/or his spouse, to the extent applicable).

Should the terms of this Proposal be acceptable to you, please execute below and return on or before 5:00 p.m. Phoenix time on August 22, 2008, at which date and time this Proposal will expire if not accepted.

Sincerely,
Stratera Portfolio Advisors, LLC

By: _____
Doug Smith, Manager

Acknowledged and accepted this ____ day of August, 2008.

Mortgages Ltd.

By: _____
Rich Feldheim, CEO